

Law and the Public's Health

PHILIP MORRIS USA V. WILLIAMS: IMPLICATIONS FOR PUBLIC HEALTH POLICY AND PRACTICE

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This installment of *Law and the Public's Health* reviews the U.S. Supreme Court's February 20, 2007, decision in *Philip Morris v. Williams*¹ and considers its implications for public health policy and practice. The *Philip Morris* case focuses on the extent to which the U.S. Constitution imposes limits on the sanctions that can be imposed by the judicial system on corporations whose intentional or negligent practices or whose products affect the public's health.

BACKGROUND

In 1997, Jesse Williams died from smoking-related lung cancer. Williams began smoking cigarettes manufactured by Philip Morris while he was stationed in Korea in the 1950s.² Believing the assertion that smoking the cigarettes would help keep mosquitoes away, Williams soon began to smoke more than two packs of Marlboros daily. Each time Williams's family asked him to stop smoking, he found publications that claimed cigarette smoking did not harm one's health. Based on these beliefs, Williams continued to smoke and lived a relatively healthy life. However, in late 1995, Williams began exhibiting symptoms of lung cancer and died in March of 1997. After his death, Williams's wife sued Philip Morris in state court for damages arising from the company's conduct.

Following a trial, the jury found the company liable for both negligence and deceit, although it also found contributory negligence on the part of the decedent. The jury went on to award Williams's wife compensatory damages of approximately \$821,000, along with an additional \$79.5 million in punitive damages. The trial judge then reduced the punitive damages award to \$32 million to avoid awarding excessive damages. In doing so, the judge relied upon an earlier U.S. Supreme Court decision, *BMW of North America, Inc. v. Gore*,³ in which the Supreme Court set forth a three-factor test for reviewing the constitutionality of a punitive damages award: (1) the reprehensibility of the defendant's conduct, (2) the award-to-harm ratio,

and (3) comparable penalties.⁴ The Court considered punitive damages awards that fail this test to be grossly excessive and in violation of a defendant's Constitutional due process rights.

Each party appealed the reduced punitive damages award to the state's appellate court, which reinstated the original \$79.5 million punitive award. The Oregon Supreme Court denied further review, and Philip Morris then appealed to the U.S. Supreme Court, which sent the case back to the lower courts for additional review.⁵ When the Oregon Supreme Court once again approved the original \$79.5 million award, it concluded that such an award did not violate the company's constitutional due process rights.⁶ The Oregon Supreme Court determined that even though the punitive-to-compensatory damages ratio was nearly 100 to 1 (\$79.5 million vs. \$875,000), the company's conduct was so reprehensible as to justify such an award.

The Oregon Supreme Court also rejected Philip Morris's argument that the award violated its due process rights because it represented punishment for injuries caused to individuals whose claims were not before the court. (The trial court allowed the plaintiff's attorney to argue that the jury should consider other Oregon residents injured or killed by the company's cigarettes and that the Marlboro brand accounted for one out of every three people killed by smoking cigarettes.)⁷ Finding that Philip Morris's conduct was "extraordinarily reprehensible," the Oregon Supreme Court held that, "Philip Morris knew that smoking caused serious and sometimes fatal disease, but it nevertheless spread false or misleading information. . . . It deliberately did so . . . knowing that it was putting the smokers' health and lives at risk, and it continued to do so for nearly half a century."⁸

Philip Morris appealed the case to the U.S. Supreme Court.

THE U.S. SUPREME COURT DECISION

A five-to-four majority of the Court overturned the Oregon Supreme Court's decision. In doing so, the Court effectively refined the *BMW* test—at least to the extent that the test was understood as permitting juries to treat harm to society when calculating the actual dollar value of punitive damages. At the same time, the Court declined to declare the award grossly excessive, instead sending the case back once again for a further determination of punitive damages. In so

doing, the majority held that a defendant is deprived of property without due process when a jury is permitted to base an award in part on consideration of the harm caused to people whose claims are not before the trial court. Had Williams represented a class, the harm caused to all class members might have been relevant. But in fact, Williams's case involved only one individual, thereby barring the jury from taking into account harm to others when considering the *BMW* reprehensibility factor.

Writing for the majority, Justice Breyer noted that the Fourteenth Amendment bars a state from depriving individuals of life, liberty, or property without due process of law.⁹ In its earlier opinions, he wrote, the Court had limited the awarding of punitive damages based upon this amendment. He further noted that punitive damages are generally not awarded as a means of compensating injured people, but rather to deter a defendant from continuing to act in ways that injure people.¹⁰ Thus, punitive damages of the type contemplated in the *BMW* decision are usually awarded only in situations in which a defendant's behavior has been particularly egregious and when compensatory damages alone are not enough.

Justice Breyer went on to state that at the same time, however, the Fourteenth Amendment's due process considerations mean that states may permit juries to award punitive damages under state law only up to an amount necessary to carry out the state's legitimate interests in punishment and deterrence. Breyer said that under the *BMW* test, "only when an award can be fairly characterized as 'grossly excessive' in relation to legitimate state interests does it enter the zone of arbitrariness"¹¹ that violates the Constitution.

In the opinion of the *Philip Morris* majority, this "zone of arbitrariness" becomes a potential issue when state law permits punitive damages to be used to punish a defendant for injuries caused to individuals who are not parties to the suit. This is because the Due Process Clause requires that a defendant be given the opportunity to present every defense available in court—a right that is not possible if injuries to nonparties are taken into consideration when calculating the proper amount of punitive damages.¹² In placing this limitation of state power to permit jury damages, the majority was careful to clarify that the question of harm to nonparties can legitimately be presented during trial, even though the evidence cannot be the basis for determining the actual size of the punitive damages award.

As a result, a state that permits such evidence must also ensure that in instructing a jury, a trial judge clarifies that jurors may consider harm to others when determining the degree of reprehensibility of the

defendant's actions (one of the *BMW* factors), but not when deciding how large a punitive damages award will be. In other words, harm to broader society (i.e., nonparties) may serve as a basis for satisfying *BMW*'s "reprehensible" factor, but cannot be considered in calculating the punitive damages award.

The four dissenters—whose position takes on added importance when, as here, the decision is very close—wrote multiple opinions. The dissent written by Justice Stevens argued that harm to others is appropriate not only in determining reprehensibility but also in calculating punitive damages. Justice Stevens pointed out¹³ that the purpose of punitive damages is precisely to recognize harm to the public, in contrast to compensatory damages, which are intended to aid a particular plaintiff. In his view, therefore, social harm was relevant not only to the question of whether the *BMW* reprehensibility test was met but also to the amount of recovery. Otherwise, there was essentially no point in finding reprehensible conduct, because the jury could not properly punish it.

Justice Thomas's separate dissent¹⁴ reiterated his view that the Constitution does not place limits on the amount of punitive damages a state can award. Finally, writing for Justices Scalia and Thomas, Justice Ginsburg also issued a dissenting opinion,¹⁵ which, like Justice Stevens's dissent, focused on the distinction sought to be drawn by the majority between the presence of reprehensible conduct and the amount of the punitive award; she argued that the majority view was illogical, because if reprehensible harm is social harm, then the remedy should represent the harm done to society.

IMPLICATIONS FOR PUBLIC HEALTH PRACTICE AND POLICY

Philip Morris v. Williams has important implications for public health policy and practice in the context of reprehensible conduct that poses threats to large groups of individuals. The decision significantly limits dollar value of redress that courts are permitted to approve as a matter of Constitutional due process. Although it is not yet clear what the ultimate size of the punitive damages award will be in this case, as it was remanded for further review, the majority opinion effectively means that a defendant found liable for reprehensible social injury may nonetheless be made to pay only an amount in line with injury to the individuals whose claims are actually being heard.

A basic underlying theory in tobacco litigation has been harm to society. The *Philip Morris* decision effectively precludes this type of strategic use of litigation (unless it is filed on behalf of a broad class), where the

purpose is to financially vindicate society. Because class action litigation itself is bounded by many procedural and substantive constraints, the impact of *Philip Morris* may be to discourage future social litigation.

At the same time, there may be a deeper meaning in the majority opinion. Recall that an enormous punitive damages award is realized by the party to the litigation, not by society at large, unless the winner happens to invest the recovery in social reforms. Rather than viewing the decision as a bar to social recoveries, one might view the *Philip Morris* case as a message from the Court to lawmakers, which goes something like this: If you want to deter reprehensible corporate conduct that injures society, then regulate the conduct prospectively. Don't allow bad conduct to continue in the hope that ultimately a prevailing party will do the regulating for society by putting the actor out of business.

In the case of tobacco, this prospective approach may mean comprehensive regulation and taxation, and legislative techniques that are in wide use and considered totally lawful. What is not lawful in the majority's view is to tolerate reprehensible conduct and then permit the courts to allow the imposition of after-the-fact awards that have no bearing on the injuries actually proved in court. Whether state legis-

latures understand and act on this message, however, remains to be seen.

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